

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

WP(C).No. 11845 of 2015 (E)

PETITIONER :

**M/S. HIMALAYA DRUG COMPANY,
27/2164-A, ANANTHMOORTHY CHIRA ROAD,
KADAVANTHARA, COCHIN-682 020,
REPRESENTED BY IT'S SC & F AGENT MR.G.MANIKANDAN.**

BY ADV. SMT.K.LATHA

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
SECRETARIATE, THIRUVANANTHAPURAM-695 001**
- 2. THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST, WALAYAR-678 105.**
- 3. THE COMMISSIONER, COMMERCIAL TAXES,
THIRUVANANTHAPURAM-695 001**

BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).NO.11845/2015

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE DETENTION NOTICE OR NO.14/4/15-16 DATED 06/04/2015
ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER DEMANDING
SECURITY DEPOSIT OF 4,77,186/-**
- P2 COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF KERALA IN WP
(C).NO.3296 OF 2015 DATED 2/2/2015.**
- P3 COPY OF THE CLARIFICATION PETITION FILED BY THE PETITIONER BEFORE
THE THIRD RESPONDENT.**
- P4 COPY OF THE HEARING NOTICE DATED 4/11/2014 ISSUED BY THE THIRD
RESPONDENT TO THE PETITIONER.**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No. 11845 of 2015 (E)

.....
Dated this the 9th day of April, 2015

JUDGMENT

The petitioner is aggrieved by Ext.P1 detention notice whereby, a consignment of Ayurvedic medicines and Babycare gift packs etc., that was being transported at the instance of the petitioner, was detained by the respondents. In the writ petition, the petitioner is aggrieved by the insistence of the respondents that the petitioner must pay the security deposit demanded in the detention notice, as a condition for release of the goods and vehicle.

2. Heard Smt.Latha K., the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I dispose the writ petition with the following directions:

(i) On a perusal of Ext.P1 detention notice, it is seen that, the objection of the respondents is essentially with regard to the rate of tax to be adopted on the items that was being transported. It is also stated that, the value in the invoice that accompanied the transportation of the goods is shown as Rs.15,61,066.52, the value declared in the 8F declaration was Rs.1,56,106.52. On account of the

said defect, the respondents suspected an evasion of tax. The learned counsel for the petitioner would submit that, the difference in the rate of tax is on account of a classification dispute, which is currently pending adjudication at various levels. As regards the discrepancy in the value shown in the 8F declaration, it is pointed out that, the said figure was shown by an inadvertent mistake insofar as the person, who prepared the 8F declaration omitted to add the digit '6' after "156106". On a consideration of the submissions, I take note of the fact that, the issue with regard to classification is a contentious one, which is pending adjudication at various levels. As far as discrepancy in the value of the goods shown in the 8F declaration is concerned it is clear that, it is an inadvertent mistake insofar as the invoice that accompanied the goods, which is the relevant document for the purposes of transportation showed the value of the goods correctly as Rs.15,61,066.52. I also take note of the fact that, the petitioner is a registered dealer in the State and direct the 2nd respondent to release the goods and vehicle to the petitioner, on the petitioner furnishing a simple bond without sureties for the security deposit amount demanded in Ext.P1 detention notice, before the 2nd respondent.

(ii) The respondents shall thereafter transmit the files to the adjudicating authority who shall adjudicate the matter and pass orders, after hearing the petitioner, within two months from the date of receipt of a copy of this judgment.

(iii) The petitioner shall produce a copy of this judgment and a copy of the writ petition before the 2nd respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/09/04/